

REMARKS

The application includes claims 1-22 and 77-100 prior to entering this amendment.

The examiner rejects claims 1-19, 77-86, and 90-97 under 35 U.S.C. § 102(e) as being anticipated by Black et al. (U.S. Patent 6,754,833).

The examiner rejects claims 20-22, 87-89, and 98-100 under 35 U.S.C. § 103(a) as being unpatentable over Black in view of Zhang et al. (U.S. Patent Application 2005/0044216).

The applicants amend claims 1-4, 6, 8, 11, 19-22, 78-90, and 91-100 and add new claims 101-106.

The application remains with claims 1-22 and 77-106 after entering this amendment.

The applicants traverse the rejections, add no new matter, and request reconsideration.

Claim Amendments

The applicants amend claims 4, 6, 8, 11, 19-22, 78-90, and 91-100 and add new claims 101-106. Support for the amendments and new claims may be found in the application as filed, for example, on pages 9-11, and 13-15.

Claim Objections

The applicants thank the Examiner for pointing out the informality in claim numbering. The applicants have corrected the claim numbering according to the examiner's suggestions.

Withdrawal of Final Rejection

The applicants request that the examiner withdraw the finality of this rejection. The applicants remind that examiner that:

“The examiner may withdraw the rejection of finally rejected claims. If new facts or reasons are presented such as to convince the examiner that the previously rejected claims are in fact allowable or patentable in the case of reexamination, then the final rejection should be withdrawn. Occasionally, the finality of a rejection may be withdrawn in order to apply a new ground of rejection.”¹

¹ MPEP §706.07(e), Withdrawal of Final Rejection, General, ¶2.

As we describe in further detail below, the examiner should withdraw the rejection of independent claims 1, 77, and 90 for the following reasons:

- Rejections under 35 USC 102(e) are valid only if each and every element is expressly or inherently described in a single prior art reference.²
- “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference.’”³
- Black only generically describes “compiling data relating to user traffic on the Internet.”⁴
- Black does not describe collecting statistical data at an access point of a network as recited in independent claims 1, 77, and 90. Furthermore, it is not clear in Black that the “compiling of data” is necessarily performed at an access point, rather than at some other location.

Accordingly, Black does not teach each and every element of independent claims 1, 77, and 90. The applicants request the examiner withdraw the finality of the rejection.

Claim Rejections Under § 102

Rejections under 35 USC 102(e) are valid only if each and every element is expressly or inherently described in a single prior art reference.⁵

“The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. ... To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference.’”⁶

Thus, each element of a claim must be explicitly taught, or must be clearly and necessarily present in the reference.

First, Black does not describe the “collecting statistical data for a plurality of user terminals at an access point of a network” recited in claim 1. Claims 77 and 90 include similar language. The examiner cited the Internet Partner’s compiling of data relating to user traffic on

² MPEP §2131, Anticipation - Application of 35 U.S.C. 102(a), (b), and (e)

³ MPEP §2112, Requirements of Rejection Based on Inherency; Burden of Proof, Section IV.

⁴ Black, col. 12, ll. 66-67.

⁵ MPEP §2131, Anticipation - Application of 35 U.S.C. 102(a), (b), and (e).

⁶ MPEP §2112, Requirements of Rejection Based on Inherency; Burden of Proof, Section IV (emphasis in original).

the Internet to anticipate this element.⁷ But Black fails to describe in detail where in its system the compiling of data occurs. And it is not necessary for Black's compiling to occur at an access point of a network as required by the claims since the compiling could conceivably be performed at a server of the Internet Partner or in other locations. Black does not include sufficient disclosure to support the examiner's position.

Moreover, Black implies that the access point does not collect the data. The examiner is apparently citing Black's Carrier as the access point or the operator of the access point.⁸ The compiled data in Black is provided to the Carrier for a user so that the Carrier can develop services and applications.⁹ If the Carrier was indeed serving as the access point, the Carrier would already have the data. There would be no need for the Internet Partner to send the data it received from the Carrier back to the Carrier.

Second, Black does not describe how payments to an operator of an access point are determined.¹⁰ It is not until column 12, lines 10-23, that Black describes payments to the Carrier. Even then, Black only discloses that this "revenue stream is also shared between the Carrier and the Internet Partner." In particular, Black does not describe nor is it necessary that the sharing be based on data collected by the access point. Accordingly, Black does not teach each and every element of claims 1, 77, 90, and dependent claims 2-19, 78-86, and 91-97.

The applicants request that the examiner withdraw the rejection of claims 1-19, 77-86, and 90-97.

Claim 11 recites that "*information about data provided from the server to the plurality of user terminals comprises information about data packets received at the access point from the server and forwarded by the access point to at least one wireless user terminal.*" Thus, the data packets used for collecting the statistical data are packets that pass through the access point from the server to the wireless user terminal. Claims 86 and 97 include similar language.

The cited section of Black refers to the Internet Partner compiling data on user traffic on the Internet. If the Carrier is the access point, then the Internet Partner must be collecting statistical data in some part of the Carrier's infrastructure 108. Nothing in Black describes such data collecting.

⁷ Black, col. 12, ll. 66-67.

⁸ Office Action dated 6/12/7, p. 3.

⁹ Black, col. 13, ll. 2-4.

¹⁰ Black, col. 10, line 44 through col. 11, l. 49 discusses only payments to the Internet Partner.

The applicants remind the examiner that the presence of data packets at a server on the Internet is not the same as the presence of data packets at an access point. The Internet is an unreliable communications medium. (The applicants refer the Examiner to the Transmission Control Protocol (TCP) and the User Datagram Protocol (UDP) used for reliable and unreliable transmissions on the Internet, for example.) In other words, a packet from a server may or may not arrive at its destination. Thus, collecting statistical data on packets at a server may include data on 100% of the packets, while collecting statistical data on packets at an access point between a user terminal and a server may include less than 100% of the packets. Compiling data on Internet traffic does not necessarily mean that statistical data is collected on data packets at an access point as described in claim 11. Accordingly, Black does not teach each and every element of claims 11, 86, and 97.

The applicants request that the examiner withdraw the rejection of claims 11, 86, and 97.

Claim Rejections Under § 103

Claim 20 recites that *“the information about data provided from the server to the plurality of user terminals comprises a count of bytes of data received at the access point from the server.”* Thus, the statistical data that is used to determine a payment in claim 1 is a count of bytes of data received at the access point from the server. Claims 21-22, 87-89, and 98-100 include similar language.

First, although Zhang describes an accounting stop request packet that contains a count of bytes, there is no suggestion on what to do with the count, other than sending it to an authentication, authorization, and accounting (AAA) server.¹¹

Second, even if there is a use suggested in Zhang for the bytes, it is not for determining a payment to an operator of an access point. The data sent to the AAA server may be used for various rate schemes for customers.¹² Thus, it would be used to bill a customer, not determine a payment to a customer, nor determine a payment to an operator of an access point.

Accordingly, even if Zhang is combined with Black, there is no suggestion to use a count of bytes in the determination of a payment to an operator of an access point. At best, Zhang adds a way for Black's Internet Partner or Carrier to bill customers. The combination of Black and

¹¹ Zhang, ¶115.

¹² Zhang, ¶7.

Zhang does not teach or suggest each and every element of claims 20-22, 87-89, and 98-100. The applicants request that the examiner withdraw the rejection of claims 20-22, 87-89, and 98-100.

New claim 101 includes *“determining the payment associated with the account associated with the operator of the access point in response to an amount paid for the access point.”* New claim 102 includes determining the payment associated with the account associated with the operator of the access point in response to a subsidy provided for the access point. New claim 103 includes *“determining the payment associated with the account associated with the operator of the access point in response to an overpayment for the access point.”* In each of these new claims, the payment to the operator of the access point depends on purchase and/or operating parameters of the access point. Both Black and Zhang are silent on such parameters of an access point.

New claim 104 includes *“determining a payment for an internet service provider in response to the statistical data, the internet service provider operating the network.”* New claim 105 includes *“determining a portion of the payment for the internet service provider as the payment associated with the account associated with the operator of the access point in response to the statistical data.”* Accordingly, the determination of the payment at the server includes a determination of a payment for an internet service provider, of which the payment to the operator of the access point is a portion. Black and Zhang do not describe such a payments hierarchy.

New claim 106 includes *“authenticating accesses of the user terminals to the network by an authenticator; and determining a payment from the content service provider to the authenticator for the authenticating; wherein determining the payment associated with the account associated with the operator of the access point includes determining a portion of the payment from the content service provider to the authenticator for the operator of the access point in response to the statistical data.”* The payments from the content service provider pass through the authenticator to the operator of the access point in response to the statistical data.

Accordingly, the combination of Black and Zhang do not teach or suggest each and every element of claims 101-106.

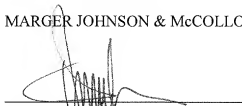
Conclusion

For the foregoing reasons, the applicants request reconsideration and allowance of the remaining pending. The applicants encourage the examiner to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Customer No. 20575

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

A handwritten signature in black ink, appearing to read 'Graciela G. Cowger', is written over a horizontal line.

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